

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

J&J SPORTS PRODUCTIONS, INC.,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. C-08-270
	§	
LIVE OAK COUNTY POST NO. 6119	§	
VETERANS OF FOREIGN WARS; dba VFW	§	
POST 6119; aka LIVE OAK COUNTY VFW	§	
POST 6119, <i>et al</i> ,	§	
	§	
Defendants.	§	

**ORDER**

On this day came on to be considered Plaintiff's Motion to Reconsider Award of Attorney's Fees and to Modify and Correct Judgment. (D.E. 86.) The Court has already considered the Parties' written submissions and oral arguments, and is unpersuaded by the arguments in Plaintiff's motion for reconsideration.

The Court finds Mr. Korn's initial attorney's fees request of \$25,575.00 (D.E. 79 at 7; D.E. 81 at 10 n.6) and subsequent request of "at least" \$16,000 (D.E. 86 at 1) to be excessive in light of (1) Mr. Korn's broad experience in this area of the law, (2) the lack of depositions or other extensive discovery in this case, and (3) the completion of trial in one day. Furthermore, Mr. Korn has sought attorney's fees for time spent on several items on which he did not prevail,<sup>1</sup> even though plaintiffs are generally not entitled to recover for this time. Walker v. U.S. Dep't of Housing and Urban Dev., 99 F.3d 761, 769 (5th Cir. 1996) ("[P]laintiffs do not have the right to bill for . . . time on issues on which they do not prevail.").

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<sup>1</sup> For example, Mr. Korn includes in his fee calculation Plaintiff's Motion for Summary Judgment (D.E. 17 & 20), Plaintiff's Motion for Leave to File Plaintiff's First Amended Complaint (D.E. 25), and Plaintiff's Motion to Consolidate (D.E. 64). (D.E. 79 at 3, 5.)

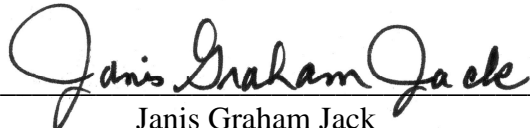
Moreover, the award of attorney's fees in this case is consistent with awards in other Communications Act cases in this District. See, e.g., J&J Sports Productions, Inc. v. Cubides, No. H-08-608, 2008 WL 2756401 (S.D. Tex. July 15, 2008) (\$1,000 in attorney's fees); J&J Sports Productions, Inc. v. Rubio, No. H-08-1770, 2008 WL 4360883 (S.D. Tex. Sept. 24, 2008) (\$716.25 in attorney's fees); DirecTV, Inc. v. Estrada, No. L-03-cv-136, 2005 WL 2372066 (S.D. Tex. Sept. 26, 2005) (\$5,187.24 in attorney's fees). Requests for attorney's fees in amounts similar to that requested by Plaintiff have consistently been rejected. See, e.g., Joe Hand Promotions, Inc. v. Chapa, No. H-08-422, 2009 WL 2215124 (S.D. Tex. July 22, 2009) (plaintiff requested \$20,000 in attorney's fees, court awarded \$2,000); Garden City Boxing Club, Inc. v. Gomez, No. B-05-249, 2006 WL 1663358 (S.D. Tex. June 5, 2006) (plaintiff requested \$40,000 in attorney's fees, court found this amount unreasonable and awarded \$7,500 in attorney's fees).

Finally, as the Court has awarded \$1,000 in statutory damages, an award of over \$16,000 in attorney's fees would be greatly disproportionate. Although there is no per se proportionality rule, the Fifth Circuit has reversed attorney's fees awards in other contexts where the fees awarded greatly exceeded the amount of damages. See West v. Nabors Drilling USA, Inc., 330 F.3d 379, 395 (5th Cir. 2003) ("The amount of damages a plaintiff recovers is certainly relevant to the amount of attorney's fees to be awarded.") (citations omitted) (Age Discrimination in Employment Act case); Migis v. Pearle Vision, Inc., 135 F.3d 1041, 1048 (5th Cir. 1998) ("The attorney's fee award was over six and one-half times the amount of damages awarded. Migis sought over twenty-six times the damages actually awarded. Regardless of the effort and ability of her lawyers, we conclude that these ratios are simply too large to allow the fee award to

stand.”) (Title VII case). As it stands, an award of \$6,000 is more than appropriate given the \$1,000 statutory damages award.

For the reasons stated above, the Court hereby DENIES Defendants’ Motion to Reconsider Award of Attorney’s Fees and to Modify and Correct Judgment. (D.E. 86.)

SIGNED and ORDERED this 8th day of September, 2009.

  
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Janis Graham Jack  
United States District Judge